

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JESUS EFREN GASTELLUM,
Defendant.

Case No. 14-cr-00637-YGR-1

**ORDER DENYING MOTION TO REDUCE
SENTENCE AND APPOINT COUNSEL**

Re: Dkt. No. 64

On November 2, 2015, defendant Jesus Efren Gastellum filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) and for appointment of counsel. (Dkt. No. 64.) On December 16, 2015, the Federal Public Defender filed a Notice of Non-Intervention. (Dkt. No. 68.) On February 10, 2016, the probation office filed a sentence reduction investigation report concluding the defendant is not entitled to a reduction. (Dkt. No. 69.)

Having read and carefully considered the papers submitted, and for the reasons explained below, the Court **DENIES** defendant's motion.

"Under § 3582(c)(2), a defendant is eligible for a sentence reduction if two prongs are satisfied: (1) the sentence is *based on* a sentencing range that has subsequently been lowered by the Sentencing Commission and (2) such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *United States v. Pleasant*, 704 F.3d 808, 810-11 (9th Cir. 2013) (quoting 18 U.S.C. § 3582(c)(2)) (internal quotations and citation omitted) (emphasis in original).

Defendant's motion for a reduction in sentence is premised upon Amendment 782 (which reduced by two the offense level for many drug trafficking offenses). The U.S. Sentencing Commission provided a November 1, 2014 effective date for the amendment, which was issued on July 18, 2014. U.S. Sentencing Commission Guidelines ("USSG") § 1B1.10(a)(1) provides that a

1 defendant's sentence may be reduced where the applicable guideline range has been lowered as a
2 result of an amendment.


3 The Court has reviewed the defendant's motion, the sentence reduction investigation
4 report, and the underlying case file. Here, the defendant was sentenced on April 9, 2015, to a term
5 of 70 months on each of two counts to run concurrently. The sentence was calculated using the
6 U.S. Sentencing Commission's 2014 Guidelines Manual, which already incorporated Amendment
7 782. Thus, the defendant's sentence was not based on a sentencing range that has subsequently
8 been lowered by amendment, and the motion therefore fails under the first prong of *Pleasant*.
9 Accordingly, the defendant's motion for a reduction in sentence is **DENIED**.

10 In light of the foregoing, there is no need for an evidentiary hearing regarding
11 resentencing. Thus, the defendant's motion for appointment of counsel is also **DENIED**. *See*
12 *United States v. Townsend*, 98 F.3d 510, 513 (9th Cir. 1996) (holding defendant not entitled to
13 appointed counsel in connection with 18 U.S.C. § 3582(c) motion where no evidentiary hearing
14 was required).

15 This Order terminates Docket Number 64.

16 **IT IS SO ORDERED.**

17 Dated: March 22, 2016

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19 YVONNE GONZALEZ ROGERS
20 UNITED STATES DISTRICT COURT JUDGE
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